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10/502,053	07/30/2004	Jun Fujimoto	256785US2XPCT	2145

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EXAMINER	
MOSSER, ROBERT E	

ART UNIT	PAPER NUMBER
3714	

NOTIFICATION DATE	DELIVERY MODE
04/29/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/502,053	FUJIMOTO ET AL.	
	Examiner	Art Unit	
	ROBERT MOSSER	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-5,8-10,12,14-19,21-23,26-28,30,32-39 and 42-46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-5,8-10,12,14-19,21-23,26-28,30,32-39 and 42-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **1, 3-5, 8-10, 12, 14-19, 21-23, 26-28, 30,** and **32-46** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa (US 6,019,369) in view of Koza et al (US 5,069,453) in yet further view of Walker et al (US 6,001,016)

Claims **1, 3-5, 8, 12, 14-15, 19, 21-23, 26, 30, 32-38,** and **41:** Nakagawa teaches a hardware and software device for providing a multi-player (mass) simulated horse racing competition including:

a time management unit configured to advance an entry time in which a plurality of users/players can enter the game (*Nakagawa* Col 4:60-65);

a decision unit configured to determine the game result through the finish order of the race horses (*Nakagawa* Col 10:55-67);

a forecast information obtaining unit including a plurality of terminals adapted to capture respective user/player forecasts of the game outcome prior the elapse of the entry time (*Nakagawa* Elm 2; Col *4:29-60*);

a determination unit configured to determine whether the game result and the respective player selection match (*Nakagawa* Col 4:65-67);

a random number generator inc communication with an advancement/ effect decision means unit for advancing the display of the racing game effect contents and length of said effect contents according to the to the determined game result after the closure of a entry time and with the passing of a start time (*Nakagawa* Col 10:55-67); and

a calculation unit configured to calculate a user/player payout amount based on a match between the game result and the player selection prior to the elapse of the entry time (*Nakagawa* Col 4:65-67).

The teachings of Nakagawa however do not explicitly present that the determination of the race outcome may be determined prior to the closure of wager acceptance however with relation to this feature Koza teaches that it is known to vary the determination of a game results prior to, during, and after the placement of a wager (*Koza* Col 1:26-29, 5:42-47, 20:44-52). It would have been obvious to one of ordinary

skill in the art of gaming to determine the results of the horse racing game of Nakagawa as taught by Koza because the determination of the game outcome allows for the determination of financial liability prior to the closure of the wagering period.

The combination of Nakagawa and Koza however, is arguably silent regarding the inclusion of a game controller adapted to control a game execution between a game controller and a terminal reflective instructions received from the terminal.

In a related wagering device Walker teaches the inclusion of a remote terminal server system to provide a game controller adapted to control a game execution between a game controller and a terminal reflective software instructions exchanged between the terminal and server (*Walker* Figure 3 & Elm 4, 10). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporate the server terminal structure as taught by Walker into the of combination of Nakagawa and Koza order to enable group player between a plurality of player across geographically disperse locations.

In the amendment entered December 10th, 2008 the applicant amends the claims to including the division of operational software into separate programs including: a bet program for acquiring player forecasts and game outcomes; and a race effect program for deciding and displaying the effect contents. The applicant's amendments entered December 10th, 2008 additionally set forth the transmittal of these programs from the controller and execution of these programs on the terminal devices.

With relation of the above the prior art of Walker (as included in the combination of Nakagawa, Koza, and Walker applied to the claims herein) teaches the inclusion of a

controller, a terminal, communication between the controller and the terminal and software enabling the execution of a game including the receipt of player predictions (forecast), and determination and display of a game result. These features as presented by Walker however these features are not taught by walker specifically as being downloaded to the terminal devices and divided into a plurality of programs for execution.

The division of a singular software program as taught by Walker is understood to represent a mere separation of parts (See MPEP 2144.04.V.C) because the separation of a singular program into multiple programs allows for the storage, transfer, updating, inspection, and execution of a component program without the bandwidth and memory requirements of performing the same process on a cumulative program because the component program would included less instructions then the cumulative program and by extension thereof would implicitly be smaller then the cumulative program. Accordingly it would have been obvious to one of ordinary skill in the art at the time of invention to have separated the singular program of Walker into multiple programs to conserve the storage, transfer, updating, inspection, and/or execution related features associated with utilization of the program

With regards to the claimed feature of executing the programs on the terminals instead of executing the programs on the controller the prior art of Walker discusses conferring results from a plurality of individual gaming machines to a remote terminal through server and communication system wherein the remote terminal is operable to accept player wagers (forecasts), receive game results and provide those game results

to the player (Walker Col 2:50-65). As best understood Walker teaches the execution by the game terminal of software to receive the player wagers, determine game results (as provided by the game server) and displaying the game results (game effect contents). In alternative to the above it would have been obvious to one of ordinary skill in the art at the time of invention to have placed the program operable to receive a player wager and/or forecast and the program to receive (alternative presented as determine) game results on the game terminal with the required hardware for operation because the placement of these programs on hardware must inherently be present on the system of Walker as a whole and accordingly the placement of these components on the terminal device would represent a mere rearrangement of parts (See MPEP 2144.04.VI.C) and/or duplication of parts (See MPEP 2144.04.VI.B) that would provide the terminals of Walker with redundancy and thereby increase the system stability and/or further lessen the power requirements placed on the server and gaming devices through distributing gaming hardware and program software across a plurality of user terminals.

Claims **9-10,** and **27-28**: Nakagawa further teaches the ability of the game device to alter the effect contents of the game based on the number of players operating a common instance of the game through altering the game payout determination (Nakagawa Col 4:51-5:4).

Claims **16-17**: Nakagawa teaches the features of a notification unit for notifying the user terminal of the game results through the presentation of the race to the player after the start time.

Claims **18, 36,** and **40**: The combination of Nakagawa and Koza teach player identification however is arguably silent regarding the inclusion of player authentication. The invention of Walker however teaches the incorporation of player authentication (*Walker* Col 8:49-9:7). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the authentication features Walker into the invention of Nakagawa and Koza in order to prohibit unauthorized use of the gaming device.

Claim **39**: Nakagawa teaches presenting a horse race with a fixed number of horses and determining the game outcome based on the finishing order of those horses thereby presenting a result selected from a fixed plurality of possible results.

Claims **42-46**: The combination of Nakagawa, Koza, and Walker teaches the claimed features as taught above including the use of time periods governing the operation of the gaming device. In addition to the above the combination of Nakagawa, Koza, and Walker, additionally teaches the use of lottery type games (*Koza* Col4:5-14). It would have been obvious tone of ordinary skill in the art at the time of invention to have incorporated a lottery type game such as taught by Koza into the combination of

Nakagawa and walker in order to provide a known game mechanic in supplement to or combination with virtual horse racing that was independent of a players ability (or in ability) to select a winning virtual racing horse.

Response to Arguments

Applicant's arguments filed December 10th 2008 have been fully considered but they are not persuasive in view of the newly applied prior art.

On pages 16 through 18 of the applicant's remarks the applicant suggests that the combination of Nakagawa and Koza would not result in enabling the determination of payout liability because the virtual race of Nakagawa permits the placement of additional wagers until the closure of the wager period. The applicant's argument however, extends beyond the motivation provided by the Examiner. Specifically the combination would not allow for the determination of the total financial liability of a race if at least wager was placed at the closure of the bet period However no such motivation was suggested by the Examiner. Instead it was previously suggested and maintained herein that such a combination would allow for the determination of financial liability during the wager period. Such information would be for instance useful for the detection of game tampering prior to the commencement of the game event.

In the above section the applicant further suggests the gambling game directed to a simulated horse race and a gambling event directed to a lottery type game would be nonanalogous to one another. Additionally it is suggested that the lottery type game of Koza does not provide for the user selection of the numbers associated therewith.

Respectfully Koza explicitly provides for the user selection of numbers in a lottery game (Koza Col 6:26-37). Further both of these games are commonly directed to the presentation of wagering event wherein a player forecast of winning horses or numbers are compared to the actual outcome to determine which forecasts were correct and qualify for the distribution of a prize. These inventions are maintained as analogous for the reasons as presented.

The features as added to claims 1 and 19 have been address in the rejections as presented above.

Newly presented claims 42-46 are additionally addressed in the rejections presented above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT MOSSER whose telephone number is (571)272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on (571) 272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/
Supervisory Patent Examiner, Art Unit 3714

/R. M./

Examiner, Art Unit 3714